

**Before The
Federal Communications Commission
Washington, D.C. 20554**

RECEIVED

SEP 18 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
BellSouth Telecommunications, Inc.)	CC Docket No. 98-161
BellSouth Tariff FCC No. 1)	
BellSouth Transmittal No. 476)	
)	
Pacific Bell Telephone Company)	
Pacific Bell Tariff FCC No. 128)	CC Docket No. 98-103
Pacific Transmittal No. 1986)	
)	
GTE Telephone Operators)	
GTOC Tariff No. 1)	CC Docket No. 98-79
GTOC Transmittal No. 1148)	

Comments of the Commercial Internet eXchange Association on the Direct Cases

The Commercial Internet eXchange Association ("CIX") files these consolidated comments in response to the "Direct Cases" filed by BellSouth, Pacific Bell, and GTE (collectively, the "ILECs") in the above-captioned tariff investigation proceedings. CIX is a trade association whose member companies represents over 150 Internet Service Provider networks that handle over 75% of the United States' Internet traffic.¹ As CIX understands it, this "threshold" phase of the investigation of ILECs' tariffs is to consider whether: (a) the ADSL services used by Information Service Providers ("ISPs") are jurisdictionally interstate; (b) the services should be tariffed at the state or federal level; and (c) the Commission should defer to

¹

The views expressed herein are those of CIX as a trade association, and are not necessarily the views of each individual member.

No. of Copies rec'd 0220
List ABCDE

the state tariffing process to minimize the possibility of a “price squeeze” on competitors. CIX does not agree with the ILECs’ position that ADSL services for ISPs must be federally tariffed as interstate “exchange access” service.

First, the question of whether federal or state regulators have jurisdiction over the ADSL services offered primarily to ISPs is complex. In examining the “end-to-end communication” issue, it may be argued – contrary to the ILECs’ position -- that ISPs and customers communicate with one another on an intrastate basis, and that a separate communication occurs between ISPs and other networks connected to the Internet.² In any event, the ILECs conclude that the ADSL traffic is “jurisdictionally mixed:” ISP caching of web-sites, ISP web-hosting of intrastate sites, and the prevalence and popularity of local web-sites are all unequivocally local communications. In such a situation, the Commission should apply not simply a rote “end-to-end communications” analysis to determine appropriate jurisdiction. In this case, it is appropriate as a matter of law and policy for the Commission to consider the importance of the state regulator’s role, especially where the ADSL services function as local loop services and are directed at ISP end-users.

ISPs today rely on state tariffed telecommunications services connecting the ISP to the customer. The ISP is an end-user under the state tariff in the same way as any other business users; it is not simply purchasing interstate “exchange access” (without the federal access

²

The Commission’s decision in “BellSouth Corp.,” Memorandum Opinion and Order, 7 FCC Rcd. 1619 (1992) is distinguishable. In that case, unequivocally interstate telecommunications were used to establish a connection to the enhanced service (voicemail). In this case, the only telecommunications service (ADSL service) is a local loop that connects two local end-users. In addition, there are significant qualitative differences: the active interaction with customer and the database of the

(footnote continued to next page)

charge). Indeed, to label the local loop connection to the customer (whether it is business line or ADSL service) as “exchange access” would contradict the statutory meaning of the term, which requires the purchaser to be providing a “telephone toll service.” 47 U.S.C. §153(16).

Second, while the Commission has stated that enhanced and information service providers can engage in interstate communications, it has never embraced the view that ISPs using the local network must be or should be subject to the federal access charge regulatory scheme as IXC’s or interstate special access providers, which is what the ILECs argue here.³ In fact, the Commission has consistently concluded that just the opposite course is best because: (a) ISPs do not use the local network in the same manner as IXC’s,⁴ and (b) the ultimate policy goals of the Communications Act promoting a vibrant ISP industry. From the initiation of its Computer Inquiry proceedings, the Commission has worked to maintain the deregulated ISP industry on all Title II matters and, as part of that broader decision, treats ISPs as end-users under the federal access charge system. See also 47 U.S.C. § 230 (Congressional policy is to preserve the existing regulatory status of the Internet).

CIX believes that it is critical for the Bureau’s decision to be consistent with the Commission’s overall policy and legal approach on ISP issues. Thus, CIX suggests that the Commission retain federal jurisdiction over the ADSL services only if the ILECs also file state

(footnote continued from previous page)

serving ISP or other local ISPs (with caching, local web-sites) is markedly different than an interaction with a voicemail service using long-distance telecommunications.

³ See, e.g., Direct Case of Pacific Bell, CC Dkt. No. 98-103, at n.3, 12 (filed Sept. 11, 1998).

⁴ “Access Charge Reform,” First Report and Order, CC Dkt. No. 96-262, at ¶ 345 (rel. May 17, 1997).

tariffs for its ADSL service. This approach recognizes the dual role of federal and state regulators. It also resolves the issue of “price squeeze” by permitting the state regulators to review the ILEC’s UNE and retail pricing decisions made for ADSL services.

Moreover, the Bureau’s decision should emphasize that reciprocal compensation on ISP traffic between the ILECs and the CLECs should be resolved in accordance with the interconnection agreements already binding on both parties. ILECs should not use the Bureau’s decision to ring out a conclusion that ISP traffic is “access,” and further stall payments owed to CLECs. CLECs are an important alternative source of underlying local telecommunications for ISPs, and should not be left unpaid for legitimate reciprocal compensation moneys owed by the ILECs. Likewise, the Bureau’s decision should not undo the Commission’s rules and orders treating ISPs as end users under the access charge regime.

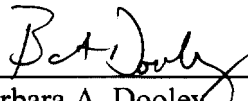
Finally, CIX notes that petitioners have raised additional objections to the ILECs’ ADSL tariffs aside from those raised in this “threshold” proceeding. If the Commission retains

jurisdiction over these ADSL tariffs, CIX believes that the Bureau must then address the other objections raised to the tariffs.

Respectfully submitted,

COMMERCIAL INTERNET EXCHANGE
ASSOCIATION

Robert D. Collet
Chairman of the Board
Commercial Internet eXchange
Association



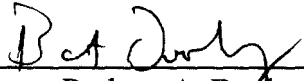
Barbara A. Dooley
Executive Director
Commercial Internet eXchange
Association

1041 Sterling Road
Suite 104A
Herndon, VA 20170
email -- bdooley@cix.org
(p) 703-709-8200
(f) 703-709-5249

September 18, 1998

SUBSCRIPTION AND VERIFICATION

I, Barbara A. Dooley, declare under penalty of perjury that the foregoing "COMMENTS OF THE COMMERCIAL INTERNET EXCHANGE ASSOCIATION" is true and correct, that to the best of my knowledge, information and belief there is good ground to support it, and that it is not interposed for delay.


Barbara A. Dooley

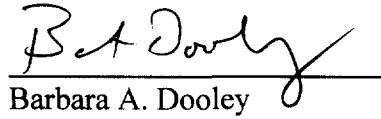
September 18, 1998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition was this 18th day of September, 1998 hand delivered to the following:

- * Durward Dupre
Darryl Howard
Attorneys for Pacific Bell
One Bell Plaza, Suite 3703
Dallas, TX 75202
 - * Gail L. Polivy
GTE
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036
 - * M. Robert Sutherland
Attorney for BellSouth
Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610
- Richard Metzger, Jr.
Chief, Common Carrier Bureau
1919 M Street, N.W.
Room # 500
Washington, D.C. 20554
- James D. Schlichting
Chief, Competitive Pricing Division
1919 M Street, N.W.
Room # 518
Washington, D.C. 20554

Judith Nitsche
Chief, Tariff and Price Analysis Branch
1919 M Street, N.W.
Room # 518
Washington, D.C. 20554


Barbara A. Dooley

* Delivered via U.S. Mail.